

1 knowledge, of Rainbow's view of the restricted nature of the  
2 proceeding relative to its applications as of July 1, 1993?

3 MR. EISEN: Well, I am going to object, Your  
4 Honor. I am only going to object because I don't see how  
5 this question of this pleading could be authenticated  
6 through this witness. If he wants to voir dire Ms. Polivy  
7 and ask her what her relationship to this particular  
8 pleading was, that's fine. But she didn't sign it. Someone  
9 else did. We don't know whether she discussed it with the  
10 person who filed it.

11 JUDGE CHACHKIN: All we are asking with all these  
12 question is if this is an accurate depiction of what the  
13 rules say.

14 THE WITNESS: I think that the pleading reflects  
15 an accurate depiction of our position. I don't think you  
16 can parse out one sentence and say that that is the sum of  
17 the petition -- I'm sorry -- the position.

18 I think if you look at page 4 and 5, particularly  
19 they go on to explain what was being referred to, and I  
20 think what the pleading had reference to was Mr. Daniels,  
21 not as to Rainbow. And we have discussed this earlier with  
22 respect to how the proceeding can -- the ex parte rules can  
23 apply in one way to a non-party, and in a different way to a  
24 party. I think it is consistent with the position that  
25 Rainbow took throughout.

1 BY MR. COLE:

2 Q My question is how could it be a restricted  
3 proceeding as to anyone if there were no formal opposition?

4 A I think that the point that was being made was  
5 that it was restricted as to Mr. Daniels, it was restricted  
6 as to Press, because they were third parties. And as the  
7 note to 1204(a)(i) reflects, it can be restricted as to them  
8 without being restricted as to Rainbow. That was the basis  
9 on which I based my opinion that this was not a situation in  
10 which Rainbow was precluded from talking to the staff.

11 Q Does Section 1204 define what is a restricted  
12 proceeding?

13 I believe you have copies up there. If you don't,  
14 I can --

15 MR. EISEN: Yes, well, hopefully. The witness can  
16 reference Section 1204.

17 (Pause.)

18 THE WITNESS: The -- I'm sorry, would you repeat  
19 your question?

20 BY MR. COLE:

21 Q The question is does Section 1204 provide the  
22 definition of restricted proceeding for purposes of the ex  
23 parte rules?

24 A Well, it refers to 1208(b).

25 Q And 1208(b) is in fact entitled "Restricted

1 Proceedings," is it not?

2 A Yes, it is entitled that.

3 Q And 1208(c), am I correct, sets forth what are  
4 restricted proceedings?

5 A Yes, and 1208(c) requires the filing of a formal  
6 opposition or a complaint, and refers back to 1204, which we  
7 discussed earlier.

8 And 1204(a) says that proceedings in which no ex  
9 parte rules -- ex parte restrictions apply subject to the  
10 provisions of 1208(b), I am interpolating, there are no ex  
11 parte restraints or requirements in the following types of  
12 proceeding. And then it lists.

13 And then it goes on to explain why proceedings  
14 that are not covered that are exempted can be restricted as  
15 to third parties. I won't read you the note again, but that  
16 is how I read the note.

17 Q Did the Managing Director in his letter out to Mr.  
18 Daniels cite Section 1204?

19 MR. EISEN: Objection. The letter says what it  
20 says. It's already in evidence.

21 JUDGE CHACHKIN: The question is he asked whether  
22 or not it referred, right?

23 MR. COLE: I'm sorry, Your Honor. I believe  
24 Exhibit No. 4, Joint Exhibit No. 4.

25 JUDGE CHACHKIN: And the question is what?

1 MR. COLE: Is whether that letter cited Section  
2 1.1204 of the Commission's rules, which is the section that  
3 Ms. Polivy continually cites.

4 MR. EISEN: And I have objected on the basis that  
5 the letter speaks for itself.

6 JUDGE CHACHKIN: I will permit this as a  
7 preliminary question. I assume there is going to be a  
8 follow up.

9 MR. COLE: 1204, yes, Your Honor.

10 THE WITNESS: And as you can see the letter cites  
11 1208.

12 BY MR. COLE:

13 Q And am I correct that the sentence immediately  
14 preceding that citation refers to Press's petition for  
15 reconsideration filed in February of 1991?

16 A And it also refers to the informal objection that  
17 was filed in July 1990.

18 Q Excuse me. Does it refer to an objection or an  
19 informal objection?

20 A Well, it says "objection." The pleading --

21 Q Thank you, that's --

22 A -- is entitled "Informal objection."

23 May I finish my answer?

24 Q Well, Mr. Eisen wants the document to speak for  
25 itself. I am perfectly happy to let the document speak for

1       itself because it will speak accurately.

2               Now, that sentence also say, starts with  
3       "because," refers to pleadings filed by Press, and then  
4       says, "The proceeding is considered restricted."

5               Do you read that?

6       A       Yes, I am reading it.

7       Q       And then cites 1.1208.

8       A       I read that too.

9       Q       Is it your testimony that after reading that you  
10       believe that Section 1204 was the governing section of the  
11       rule with respect to the ex parte applicability relative to  
12       the RBC applications?

13       A       As to Rainbow, I believed it then. I believe it  
14       now.

15               MR. COLE: I have no further questions.

16               MR. BLOCK: I have some questions.

17               JUDGE CHACHKIN: Mr. Block, go ahead.

18               MR. BLOCK: Thank you.

19                       CROSS-EXAMINATION

20               BY MR. BLOCK:

21       Q       You have a letter in front of you, the Daniels  
22       letter in front of you. Just to follow up on last point  
23       that Mr. Cole --

24       Q       What --

25       Q       Exhibit No. 4.

1 JUDGE CHACHKIN: By the way before we go on, you  
2 have a number of exhibits which you have identified.

3 MR. COLE: Yes, Your Honor, I was just going to  
4 mention that.

5 Do you want to do that now or do you want to wait  
6 until Ms. Polivy gets off the stand, whichever your  
7 preference is?

8 JUDGE CHACHKIN: Well, perhaps we should do it  
9 now.

10 MR. COLE: Okay. Your Honor, Exhibit No. 1 is  
11 already in, which is Section 1208 of the rules, is already  
12 in.

13 I would like to offer into evidence Press Exhibit  
14 No. 2, which is a seven-page document, which we have  
15 identified as the billing ledger about which there has been  
16 a fair amount of testimony already. I would like to offer  
17 that into evidence.

18 JUDGE CHACHKIN: Any objection?

19 MR. EISEN: No objection.

20 JUDGE CHACHKIN: Press Exhibit 2 is received.

21 (The document referred to,  
22 having been previously marked  
23 for identification as Press  
24 Exhibit No. 2, was received in  
25 evidence.)

1 MR. COLE: Thank you, Your Honor.

2 I would like to offer Press Exhibit No. 4, which  
3 is the Renouf & Polivy telephone bill, a one-page document,  
4 again as to which there has been testimony from Ms. Polivy.

5 JUDGE CHACHKIN: Any objection?

6 MR. EISEN: None, Your Honor.

7 JUDGE CHACHKIN: Press Exhibit 4 is received.

8 (The document referred to,  
9 having been previously marked  
10 for identification as Press  
11 Exhibit No. 4, was received in  
12 evidence.)

13 MR. COLE: And Press Exhibit NO. 3 is the comment  
14 of Rainbow Broadcasting, Limited on the Inspector General's  
15 report. It's a 30-page document, but I would like to limit  
16 the proffer to pages 22 and 23, as to which Ms. Polivy --  
17 I'm sorry -- 22 through 24, as to which Ms. Polivy has been  
18 examined today. So with that limitation I would offer Press  
19 Exhibit No. 3.

20 JUDGE CHACHKIN: Any objection to those specific  
21 pages?

22 MR. EISEN: No.

23 JUDGE CHACHKIN: All right, Press Exhibit 3 is  
24 received only as to pages 22 to 24.

25 MR. COLE: That is 22 through 24.

1 JUDGE CHACHKIN: Twenty-two through 24, yes.

2 MR. EISEN: One second, Your Honor. I'm sorry.

3 Okay, to the extent that Ms. Polivy testified that  
4 the entire pleading would be necessary in the record to  
5 understand the context those excerpts that Mr. Cole raised,  
6 maybe it would be better, and I would object only putting  
7 part of that pleading into the record if the whole document  
8 goes into the record.

9 I think when you start parsing pleadings that  
10 sometimes you can take it out of context and it really  
11 doesn't advance the record very far if there are other  
12 matters beyond those few excerpts that are pleadings, or in  
13 the pleading that --

14 JUDGE CHACHKIN: Well, all we were discussing was  
15 Mr. Gordon's --

16 MR. EISEN: That's right, but --

17 JUDGE CHACHKIN: -- conversation and recollection  
18 as to his conversation with Ms. Polivy.

19 MR. EISEN: But I believe Ms. Polivy's testimony  
20 was that without having the entire document those few  
21 excerpts that were cited by Mr. Cole were not -- were  
22 confusing, and really didn't tell the whole story.

23 JUDGE CHACHKIN: Well, if you can point to any  
24 other pages in this document which relate to that subject  
25 matter, I will receive it. But they have to relate to that



1 subject matter that the witness was questioned on, mainly  
2 the conversation.

3 MR. EISEN: Well, what would be the problem in  
4 accepting it into the record?

5 JUDGE CHACHKIN: Because there is a lot of  
6 material that has nothing to do with that, and there is no  
7 reason unless you can demonstrate its relevance. Otherwise,  
8 there is no reason to put it into the record. If you can  
9 demonstrate any portion that's relevant.

10 MR. EISEN: I understand. I am going to object to  
11 the introduction of the document, the admission of the  
12 document without having the entire document in the record as  
13 well.

14 JUDGE CHACHKIN: Obviously you can -- unless you  
15 can demonstrate other portions are relevant there is no  
16 basis for that objection. The only thing that has been  
17 demonstrated as relevant is pages 22 to 24.

18 Now, if there are other pages which pertain to  
19 that subject, I certainly will receive it. So your  
20 objection is overruled.

21 MR. COLE: Thank you, Your Honor.

22

23

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as Press  
4 Exhibit No. 4, was received in  
5 evidence, but limited to pages  
6 22 through 24.)

7 MR. COLE: And, finally, I would like to offer a  
8 document which has been identified as Press Exhibit No. 5,  
9 which is the Rainbow opposition to Press emergency petition  
10 filed with the Commission on August 26, 1993.

11 But here, again, while I have distributed complete  
12 copies of the pleadings so all parties and the witness will  
13 have an opportunity to review it, my examination has been  
14 limited to page 3 of that document. And I would like to  
15 restrict the proffer to page 3.

16 MR. EISEN: I would offer the same objection, Your  
17 Honor. And furthermore, furthermore, this is not a document  
18 that was prepared by Ms. Polivy. She has testified to  
19 certain beliefs she had about statements that were made in  
20 the course of this pleading. But to have this pleading go  
21 in with only those excerpts that Mr. Cole is relying on now  
22 I think is improper.

23 JUDGE CHACHKIN: Well, it will only go in for the  
24 purpose of explaining and clarifying her testimony. Since  
25 she has made reference to it I think it needs to be in the

1 record for that purpose.

2 MR. EISEN: Well, she hasn't made reference to it.

3 JUDGE CHACHKIN: Well, but she has testified as to  
4 whether or not she agrees with the statements in here. And  
5 in order to understand the context the statement has to be  
6 in. That's page 3.

7 So I will receive page 3 of Press Exhibit No. 5 to  
8 be received in evidence.

9 MR. COLE: Thank you, Your Honor.

10 (The document referred to,  
11 having been previously marked  
12 for identification as Press  
13 Exhibit No. 3, was received in  
14 evidence, but only page 3 of  
15 the document.)

16 MR. COLE: And there is one last follow-up matter.  
17 During this morning's examination the question arose as to  
18 the date of the public notice of the acceptance for filing  
19 of Rainbow's application, the fifth extension request in  
20 January of 1991.

21 During the break I have obtained a copy of that  
22 public notice which I would like to have marked for  
23 identification as Press Exhibit No. 6. I do not have  
24 adequate copies for everyone. I will be happy to get this  
25 overnight and redistribute it, but I think that it will be

1 useful to have in the record because it was adverted to this  
2 morning.

3 I will only introduce two pages of it. It's a  
4 multi-page document, which is a standard public notice  
5 broadcast applications issued by the Federal Communication  
6 Commission. This is dated February 5, 1991, Report No.  
7 14919, mimeo number 11606, and it reflects on page 5 that  
8 the Rainbow Broadcasting Company application for extension  
9 of its construction permit filed on January 25, 1991, had  
10 been accepted for filing.

11 (The document referred to was  
12 marked for identification as  
13 Press Exhibit No. 6.)

14 JUDGE CHACHKIN: Can't we stipulate that into the  
15 record without putting it in?

16 MR. COLE: No, we have not stipulated to the date  
17 of the acceptance notice of the application, and I am  
18 perfectly happy to stipulate, and I will be happy to show  
19 everyone a copy of that notice.

20 JUDGE CHACHKIN: Are you willing to stipulate to  
21 that date?

22 (Pause.)

23 MR. EISEN: Do you want to see it? I would  
24 stipulate to that.

25 MR. BLOCK: May we see it?

1 MR. COLE: Thank you, Your Honor.

2 So we will stipulate that the public notice of the  
3 acceptance for filing of the Rainbow application was  
4 released by the FCC on February 5, 1991. That will be the  
5 fifth extension application, the January 1991 application  
6 appeared on public notice as accepted for filing on February  
7 5, 1991.

8 JUDGE CHACHKIN: That stipulation is agreeable and  
9 will be accepted.

10 MR. COLE: Thank you, Your Honor.

11 And I have no further questions, and no further  
12 exhibits.

13 JUDGE CHACHKIN: Mr. Block.

14 MR. BLOCK: Thank you, Your Honor.

15 BY MR. BLOCK:

16 Q Ms. Polivy, looking at Joint Exhibit No. 4. This  
17 is the Daniels letter we have described it as, the letter  
18 from Mr. Sandifer to Mr. Daniels. You were asked some  
19 questions by Mr. Cole about the reference in this letter to  
20 Section 1.1208.

21 And you responded, as I understand it, you believe  
22 that the letter sets out a restriction on Mr. Daniels but  
23 not as to Rainbow; is that correct?

24 A That's correct.

25 Q Were in the letter specifically do you draw that

1 conclusion that this letter directs Mr. Daniels that he is  
2 restricted, but Rainbow is not?

3 A I didn't draw that conclusion from the face of the  
4 letter. I drew that conclusion from the FCC ex parte rules  
5 with which I was familiar.

6 Q And there is no particular language in the letter  
7 then that says to Mr. Daniels that he is restricted?

8 MR. EISEN: Objection, Your Honor. Again, it  
9 speaks for itself. Ms. Polivy has testified already what  
10 her understanding of the rules was in relationship to this  
11 particular joint exhibit.

12 JUDGE CHACKIN: Well, she has testified that she  
13 did not draw that conclusion from the letter itself, that  
14 there is nothing in the letter which admits such a  
15 conclusion.

16 Is that right, Ms. Polivy?

17 THE WITNESS: I am not sure what "such a  
18 conclusion" means. There is nothing in the letter that  
19 refers to 1204, and I believe that was Mr. Block's question.  
20 There is in the letter certainly an indication to Mr.  
21 Daniels that the proceeding is restricted as to him.

22 BY MR. BLOCK:

23 Q When you saw in the letter on the third paragraph  
24 that the proceeding is restricted, you read it as restricted  
25 only to Mr. Daniels?

1           A     Restricted as to Mr. Daniels, yes.

2           Q     Notwithstanding the fact there is nothing in the  
3 letter itself that makes that statement?

4                     MR. EISEN:  Objection.

5                     BY MR. BLOCK:

6           Q     The last clause, restricted as to Mr. Daniels; is  
7 that correct?

8           A     Well, the letter was written to Mr. Daniels and it  
9 was telling him it was restricted.  Therefore, I drew the  
10 conclusion that it was restricted as to Mr. Daniels.

11          Q     Now, you are familiar with the Commission's  
12 decision in 1994 that went to the Court of Appeals and came  
13 back here for this remand; is that correct?

14          A     Oh, yes.

15          Q     You made the argument to the Commission, did you  
16 not, that the ex parte rules are not violated by the  
17 contacts that were made on July 1 by you and by Ms. Bush a  
18 day or two before on the grounds that there was no  
19 restriction as to Rainbow; is that correct?

20          A     That is a simplistic rendition, but yes.  We have  
21 discussed here this morning the various reasons and those  
22 are the arguments we made to the Commission.

23          Q     The Commission --

24          A     The Commission did not address the question of the  
25 note of 1204(a).  They never have.

1 Q The Commission --

2 A But they did say that it was a violation of the ex  
3 parte rules.

4 Q Okay. And specifically they found that the ex  
5 parte rules were implicated and the proceeding was  
6 restricted because there was a reconsideration motion filed  
7 by Press in 1991; is that correct?

8 A My understanding of what the Commission's  
9 reasoning was, was that they determined after considering  
10 the post question that the petition for reconsideration  
11 filed by Press after -- pending its informal objection  
12 constituted a formal objection.

13 Q And that was also the conclusion of the Inspector  
14 General report; is that correct?

15 A It had previously been --

16 Q Right.

17 A -- the conclusion of the Inspector General, which  
18 the Commission adopted in its memorandum of opinion and  
19 order.

20 Q And it's also the conclusion of the Office of the  
21 General Counsel; is that correct?

22 A I do not ---

23 MR. EISEN: Objection, objection, Your Honor.

24 What is the relevance of these questions to Ms.  
25 Polivy's intent?



1 JUDGE CHACHKIN: What is the relevance?

2 MR. BLOCK: Oh, it is quite clear that, to the  
3 extent that she is making an argument that is referencing  
4 whether or not this was an informal objection or not, the  
5 rejection of that view has something to do with the  
6 reasonableness of her position and whether or not there was  
7 a ground.

8 MR. EISEN: Oh, well, that's great. If we are  
9 going to start getting into the understandings of other  
10 Commission staff persons in resolving this proceeding, then  
11 why aren't we into questions about what the staff said in  
12 other areas?

13 JUDGE CHACHKIN: I will sustain the objection. I  
14 don't see the relevance of later rulings of the Commission.  
15

16 BY MR. BLOCK:

17 Q You testified that Mr. Pendarvis and you had a  
18 conversation, a brief conversation about what was in the  
19 record, what was in the file up to the time of your  
20 conversation in late June 1993. And you said you responded  
21 that, among other things, there was a reconsideration motion  
22 filed by Press in 1991.

23 Do you recall that testimony today?

24 A i recall testimony dealing with Mr. Pendarvis's  
25 inquiry as to whether there had been an objection filed.

1 Q And you --

2 A And I did make reference to Press's petition for  
3 reconsideration, of it appending its late filed informal  
4 objection because it was late filed. Yes, if that's what  
5 you are referring to.

6 Q And you recall you specifically mentioned the  
7 reconsideration as among the objections that were filed?

8 MR. EISEN: Objection to the form of the question.  
9 If the witness can answer the question, fine. I didn't  
10 understand it.

11 THE WITNESS: I specifically mentioned to Mr.  
12 Pendarvis that there had been a petition for reconsideration  
13 filed with respect to RBC's fifth extension by Press which  
14 appended its information objection, because its information  
15 objection had been filed subsequent to the grant.

16 BY MR. BLOCK:

17 Q Do you recall that Mr. Andary asked you about your  
18 conversations with Mr. Pendarvis and/or Mr. Stewart in your  
19 interview with him?

20 A I do not.

21 MR. BLOCK: May I approach to help her recall her  
22 recollection?

23 JUDGE CHACKIN: Yes.

24 BY MR. BLOCK:

25 Q I am showing you a document entitled "Report of

Heritage Reporting Corporation  
(202) 628-4888

1 Interview." The report is dated September 1, 1994, and it's  
2 from Robert Andary, and the interviewee is Margot Polivy.

3 Would you turn to page 2, the second full  
4 paragraph and read that, please?

5 MR. EISEN: You haven't seen this. Do you have an  
6 extra copy?

7 MR. BLOCK: It's in the joint exhibits?

8 MR. EISEN: Can you just refer me to the joint  
9 appendix?

10 MR. BLOCK: Yes, it page 305 we are looking at  
11 now.

12 THE WITNESS: I've read it.

13 BY MR. BLOCK:

14 Q That is a summary, is it not, of what you told Mr.  
15 Andary of your conversation with Mr. Pendarvis?

16 A This is Mr. Andary's summary of what I told him.  
17 I expect that I had never seen this summary. I was not  
18 given the summary to review. I don't frankly know.

19 Q Okay. That summary of your description of your  
20 conversation does not include the statement that you told,  
21 include the statement that you told Mr. Pendarvis that --  
22 and/or Mr. Stewart -- that there were informal objections,  
23 and it does not mention reconsideration; is that correct?

24 A Well, that's true, it does not.

25 Q Do you recall making the statement to Mr.

1 Pendarvis that you did not -- strike that. Let me take that  
2 back.

3 Do you recall reviewing the Inspector General's  
4 report that was issued subsequently to the investigation by  
5 the Inspector General?

6 A I did review the Inspector General's report.

7 Q And in fact you had an opportunity to comment on  
8 the Inspector General's report; is that correct?

9 A We did have an opportunity to comment.

10 Q And you tried to point out errors in the Inspector  
11 General's report as best you could find them; is that  
12 correct?

13 A We tried to point out some of the errors in the  
14 Inspector General's report but we had to make some decision  
15 as to which errors were significant and which were not, but  
16 we did comment on the Inspector General's report.

17 Q You tried to -- if there was a significant error,  
18 you would have noted it in your comments then?

19 MR. EISEN: Well, objection. That is not what the  
20 witness testified to.

21 MR. BLOCK: I am asking her the question. If  
22 there were a significant error, you would have noted it in  
23 your comments; is that correct?

24 MR. EISEN: Well, the problem is with the word  
25 "significant." I assume that the question counsel is asking

1 Ms. Polivy is did she believe that if there was a  
2 significant error, that she would have commented  
3 accordingly.

4 JUDGE CHACHKIN: All right. Ms. Polivy can answer  
5 that question.

6 THE WITNESS: I think at the time that I reviewed  
7 the Inspector General's report there was something that if I  
8 thought was significant enough to comment on, I would have  
9 commented on it as far as I know, but I make mistakes too.  
10 There was a lot going on.

11 MR. BLOCK: Right, let me mark as Staff Exhibit  
12 No. 1 the Inspector General's report dated November 22,  
13 1993. I have to copies for the reporter.

14 JUDGE CHACHKIN: The document described consisting  
15 of 15 pages will be marked for identification as Staff  
16 Exhibit 1.

17 (The document referred to was  
18 marked for identification as  
19 Staff Exhibit No. 1.)

20 BY MR. BLOCK:

21 Q I want you to refer specifically to page 10 of the  
22 document, and specifically the third full paragraph that  
23 begins, "When asked if anyone." And I will read into the  
24 record the first sentence of that paragraph.

25 "When asked if anyone in all of these

1 conversations mentioned the ex parte rules Ms. Polivy said  
2 that she and Roy Stewart in one of their telephone  
3 conversations mentioned that there was an informal  
4 objection," and "informal objection" is in quotes, "and  
5 therefore it was all right for them to meet."

6 You had an opportunity to comment on the accuracy  
7 of that statement.

8 Did you file any objections or corrections to the  
9 accuracy of that statement if you can recall, Ms. Polivy?

10 A I don't know. I would have to look at what we did  
11 file, frankly.

12 Q I believe that your comments or objections were  
13 Press Exhibit No. 3.

14 Do you have that in front of you?

15 A Um-hmm.

16 Q Take a look and tell the Court whether or not you  
17 objected to the accuracy of the sentence that was read into  
18 the record.

19 A I believe in our comments -- I haven't gone  
20 through them all, but we did address the area that you are  
21 trying to explore starting on page 19, going through  
22 specifically on Footnote 9. We had previously addressed the  
23 question of whether the petition for reconsideration could  
24 have been a formal pleading if that's what you are referring  
25 to.

1           Q     But you did not in your objections, correct me if  
2     I am wrong, you did not in your objections state that the  
3     interview or that the -- state that this first sentence was  
4     inaccurate and that you had also mentioned the  
5     reconsideration petition as part of the list of filings that  
6     you told Roy Stewart were in the record when he asked if  
7     there is anything in the record, and you said an informal  
8     objection?

9           A     No, because I didn't say an informal objection.  
10    That was mr. Andary's shorthand explanation of his  
11    interview, I assume. We did however address the question of  
12    the petition for reconsideration and why it was no more  
13    formal than the other informal objections. But if you are  
14    asking me if I -- if I said to the Commission. Mr. Andary  
15    did not list that we also said X, Y, Z, we did not say so  
16    because it was not germane to what we were doing in the  
17    response.

18          Q     Is it possible that in your conversation with Mr.  
19    Pendarvis and/or Mr. Stewart you simply said there are some  
20    informal objections and never really mentioned directly the  
21    fact that there was reconsideration petition?

22                   MR. EISEN:  Objection.

23                   JUDGE CHACKIN:  Overruled.

24                   THE WITNESS:  Anything is possible, but to my  
25    recollection is that I did.

1 BY MR. BLOCK:

2 Q Because you didn't consider it a formal objection?

3 A My recollection is that I was ticking off the  
4 objections, not characterizing them. So my recollection is  
5 that I -- while anything is possible -- my recollection is  
6 otherwise.

7 VOIR DIRE EXAMINATION

8 JUDGE CHACHKIN: But it's true that in your  
9 comments you didn't cite as an error the fact that there is  
10 no reference to the petition for reconsideration?

11 THE WITNESS: No, and I didn't cite as an error  
12 that there was more than one informal objection as well.

13 JUDGE CHACHKIN: I understand that. But as far as  
14 you didn't mention anything as an error, anything about the  
15 petition for reconsideration?

16 THE WITNESS: No, I did not think it was germane  
17 to what we were doing.

18 JUDGE CHACHKIN: Well, you were dealing there with  
19 the accuracy of your telephone conversations with Mr.  
20 Stewart and Mr. Pendarvis, were you not?

21 THE WITNESS: No, I think that our pleadings speak  
22 for themselves of what we were addressing, and there was a  
23 judgement that we made as to the best way to present our  
24 case.

25 JUDGE CHACHKIN: Well, I don't understand.



1           What was the purpose of your commenting on Mr.  
2   Warwick's report?

3           THE WITNESS: Well, Your Honor, I think that there  
4   are some 29 pages of comments that we made on his report  
5   that speak for themselves. I mean, we did not try to parse  
6   out every single area and every single error that he may  
7   have made. This was Mr. Andary's rendition of his  
8   interview.

9           JUDGE CHACHKIN: I understand that, but certainly  
10   you were concerned about the accuracy of any statements made  
11   by Mr. Andary concerning what you said, consistent with what  
12   you said about the conversations that you had with staff  
13   personnel.

14          THE WITNESS: To be honest with you, Your Honor, I  
15   was more concerned that they had misread and misapplied the  
16   law to our detriment than I was with what I considered at  
17   that stage rather insignificant misstatements of fact.

18          JUDGE CHACHKIN: So you weren't concerned that Mr.  
19   Andary had accurately stated what you told him about your  
20   conversation with Mr. Pendarvis and Mr. Stewart?

21          THE WITNESS: Your Honor, I had no transcript of  
22   any conversation that I had with Mr. Andary. This, as far  
23   as I was concerned, was Mr. Andary's rendition. There were  
24   much more important errors that he had made that we were  
25   trying to focus the Commission's attention on. And that